# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 22058 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KANCHANBEN SHAILESHKUMAR SHAH - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 3 - Respondent(s)**

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**Appearance :**

MR UMANG K CHOKSI for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 4.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 16/01/2006**

**ORAL JUDGMENT**

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has

challenged the legality and validity of the order passed by the Collector of Stamp, Stamp Duty Valuation, Ahmedabad dated 31.5.2004 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.1,44,860/- plus Rs.250/- by way of penalty in all Rs.1,45,110/- with regard to the document No.943 executed and presented before the Sub-Registrar, Paladi dated 17.5.1994.

2.Shri Umang Chokashi, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order dated 31.5.2004 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.15,15,201/-. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is

at Rs.66,666/- . He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

3.Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 31.5.2004 no particulars are given that on what basis the Collector of Stamp has come to the conclusion that the valuation of the property in question is at Rs.15,15,201/-. The learned AGP for the Authorities

is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.***(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

4.Heard the learned advocates appearing on behalf of the parties.

5.I have gone through the order passed by the Collector of Stamp. In the impugned order, no particulars and/or basis have been mentioned by the Collector of Stamp that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.15,15,201/-. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Collector of Stamps, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.15,15,201/-. It also prima-facie

appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.66,666/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the Collector of Stamps wants to rely to determine the valuation of the property in question.

6. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The impugned order passed by the Collector of Stamps, Stamp Duty Valuation, Ahmedabad dated 31.5.2004 is hereby quashed and set aside and the matter is remanded to the Collector of Stamp, Stamp Duty Valuation, Ahmedabad for deciding the same afresh

in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Collector of Stamps proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the order passed by the Collector of Stamps, Stamp Duty Valuation, Ahmedabad dated 31.5.2004 then in that case, the respondents are not required to refund the said amount at this stage and the same would be subject to the ultimate outcome of the proceedings on remand and the said amount be adjusted on the basis of the order that may be passed by the Collector of Stamps.

7. It will be open for the petitioner to raise all the contentions at the time of deciding the case on remand and the same may be considered by the

authority in accordance with law and on merits.

8.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

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